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No. 06-162

In The
Supreme Court of the United States

SANDRA CANO, formerly known as
"MARY DOE" of *DOE v. BOLTON*,

Petitioner,

v.

THURBERT E. BAKER, et al.,

Respondents.

**On Petition For A Writ Of Certiorari To
The United States Court Of Appeals
For The Eleventh Circuit**

MOTION TO FILE A BRIEF *AMICUS CURIAE* OF TEXAS BLACK AMERICANS FOR LIFE AND L.E.A.R.N. (THE LIFE EDUCATION AND RESOURCE NETWORK) AND BRIEF *AMICUS CURIAE* OF TEXAS BLACK AMERICANS FOR LIFE AND L.E.A.R.N. (THE LIFE EDUCATION AND RESOURCE NETWORK) AND APPENDIX THERETO IN SUPPORT OF THE PETITIONER

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MOTION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

The Court's *amici*, Texas Black Americans for Life and the Life Education And Resource Network (L.E.A.R.N.), request leave of this Court to file a brief *amicus curiae* in this case. Consent to file it has been obtained from the petitioner, whom this brief supports; consent was denied by the respondents.

First, the *amici* filed a motion to intervene as of right in the District Court in the current proceedings; the basis of that motion filed in the District Court is the disparate impact upon the African-American community which abortion has and its use, in the hands of some people, as a tool of racial genocide.

Respondent Baker filed objections to our motion and to those of the petitioner. Our motion was then denied, and was not appealed. Nonetheless, the *amici* still have much to say to this Court about this issue. The limitations of an *amicus* brief at the petition stage being what they are, a proper discussion of the full scope of this problem can only be developed on the merits; for there are very numerous points which the *amici* felt compelled to raise in this brief itself for the sake of getting certiorari granted in the first place.

Second, the *amici* also wish to point out that they are organizations which in fact were formed specifically for the purpose of informing society generally, and the African-American community specifically, about the effects which this case and its companion case, *Roe v. Wade*, have had on the African-American community, and also to work toward the eventual overturning of this case and *Roe*, either in the courts, or by the constitutional amendment process. The

NAACP, we note, was formed in response to *Plessy v. Ferguson*,[1] the foundation of the notorious "separate but equal" doctrine. In like manner, this case and *Roe* are to us what *Plessy* was to the NAACP.

Furthermore, since this Court denied certiorari last year in the companion case, *Roe v. Wade* (sub nom. *McCorvey v. Hill*), and since there is no other companion case to *Roe* besides this one, if this Court does not take this case, the *amici* will have lost an irreplaceable opportunity to make their statements to this Court concerning their issues on the merits. Accordingly, the *amici* beseech this Court to allow them to present arguments in support of granting certiorari in what is to them a case of most exceptional importance.

Third, there is (academically, at least) a jurisdictional standing issue, although neither lower court deemed there to be one. We note that although the Petition itself addresses this issue with citation to authorities on point, the petitioner apparently was not aware of one case from this Court itself which is on point, and we bring it to this Court's attention in this brief, consistent with the statement in Rule 37 of this Court that "[a]n *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court." The remainder of the brief likewise focuses principally on matters not raised in the Petition.

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[1] *Plessy v. Ferguson*, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

Fourth, the *amici* are convinced that the focus of what we are trying to say to the Court would be split if we filed one brief in this case and a separate one in one or more of the partial-birth abortion cases, and that the clarity and persuasiveness of our statement to this Court would be diluted accordingly. Other *amici* may have separate and distinct things to say to this Court regarding this case and those others; but we have points to make on both topics which are integrated. For this reason we rejected the idea of filing separate briefs in this case and in those others. We also believe that on the topic of partial-birth abortion alone, the petitioners and their *amici* will probably handle all the issues adequately.

Wherefore, the *amici* request leave of this Court to file the brief.

Respectfully submitted,

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INTEREST OF THE *AMICI*

The *amici* organizations were formed in response to *Roe v. Wade* and this case (*Doe v. Bolton*) to publicize the use of abortion as a tool of racial genocide, and to seek to have those cases overruled.[1] Thus, *Roe* and *Doe* are to these *amici* what *Plessy v. Ferguson* was to the NAACP. These *amici* moved to intervene as of right in the District Court. That motion was denied, and was not appealed. Nevertheless, the *amici* believe they can add much to this Court's consideration of this case by what they say herein. Consent to file this brief was granted by the petitioner, but not by the respondents; this brief is filed by motion.

SUMMARY OF ARGUMENTS

The Court faces a new question: Whether it is conclusive that a party who prevailed originally is barred from later seeking relief under Rule 60, or whether this is a presumption only? A prior holding of this Court moots any jurisdictional standing issue. As to the merits, the petitioner filed an affidavit swearing that this case was a fraud upon her and upon the court, and harms her now. Yet, the petitioner had no opportunity to be heard. This flies in the face of Rule 60 and this Court's holdings on due process and how the Federal Rules are to be construed. This also conflicts with rulings of the Eighth and Seventh Circuits.

Furthermore, *Planned Parenthood v. Casey* has failed. The abortion controversy has intensified, even in the judiciary. *Casey* itself did not follow this Court's own precedent on *stare decisis*. Furthermore, a complete review of the partial-birth abortion cases would be more easily accomplished by taking this case. In the alternative, if this Court, contrary to *Casey*, will never review *Doe* and *Roe* no matter what new body of evidence and facts can be elucidated, then this Court should take this case and simply come out and say so in

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[1] Counsel of record on this brief is the sole author of this brief. No person or entity, other than the *amici*, their members, or their counsel, made a monetary contribution to the preparation or submission of the brief.

plain language right now, or else face litigation and nomination battles without end.

ARGUMENTS

I. The Eleventh Circuit Has Decided An Important Question Of Federal Law That Has Not Been, But Should Be, Decided By This Court: Whether It Is Conclusive That A Party Who Prevailed Originally Is Barred From Later Seeking Relief Under Rule 60 Of The Federal Rules Of Civil Procedure, Or Whether This Is A Presumption Only?

We note first that there is no jurisdictional standing issue here, nor did the lower courts deem there to be one. This Court, in fact, has already ruled on point, holding that under Rule 60, the jurisdiction of a court to hear the motion is simply a continuation of the jurisdiction which attached at the time of the original filing of the lawsuit.[2]

A. The Eleventh Circuit Decided This Question In A Way Which Conflicts With The Eighth And Seventh Circuits

Rule 60(b) reads, in pertinent part,

"This rule does not limit the power of a court . . . to set aside a judgment for fraud upon the court."

Petitioner Sandra Cano swore under oath, in an affidavit filed in the District Court, that she never wanted an abortion, and how she was fraudulently misrepresented before the court about this matter without even her knowledge. See paragraphs 1-3, 5, 7, 11-13, 15, 21, 23, and 24 of her affidavit. (See Appendix of this Brief at A-1 to A-9, and Appendix of the Petition at App. 34-43.)

To this Court, of course, the petitioner's case is several things. It is a landmark case, and a core of the doctrine of

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[2] *U.S. v. Beggerly*, 524 U.S. 38, 46, 118 S.Ct. 1862, 1867, 141 L.Ed.2d 32, 40 (1998).

legal abortion.[3] It is *stare decisis*. It is binding precedent upon the lower courts. It is the authority of this Court over the states. And it is a cornerstone of this Court's statements on due process.

To the petitioner, however, it is something else. It is her case . . . *her case* . . . and it hurts. It hurts because every single day she will continue to know that, unless she gets this millstone untied from around her neck, she will be forever associated with something she considers horrible, something her own lawyer foisted upon her by violating her trust, something that will follow her all the way to the grave.

This case damages the petitioner's reputation among her friends, family, and even strangers. It makes her an object of pity, and inflicts emotional distress upon her. She wished to testify to this, and still hopes to testify, but she was denied her chance to do so. In support of these statements of her harm, we again refer the Court to the affidavit of the petitioner. We direct the Court's attention to paragraphs 16 and 19 of that affidavit (Appendix at A-6 to A-8). See also Appendix of the Petition at App. 41-43.

The fraudulent use of the petitioner means that she is not simply someone who changed her mind and wants the court to undo what she had originally asked for; rather, this is a case in which someone who *never* wanted the relief granted is being harmed by that relief now, relief which was secured by fraud upon her and upon the court. The harm she alleges establishes that the fraud is something more than *de minimus*. In that light, consider a case cited in *Moore's Federal Practice*:

> "The Williamses' claim that their attorney lacked authority to agree to the settlement, though conclusory in nature, does state a ground for relief under rule 60(b). Although an attorney is presumed to possess authority to act on behalf of the client, '*a judgment entered upon an agreement by*

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[3] *Doe v. Bolton*, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973); see also, *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973).

> *the attorney may be set aside on affirmative proof that the attorney had no right to consent to its entry.'* Because the motion to vacate the judgment stated a claim cognizable under rule 60(b), the district court abused its discretion in summarily denying the motion without any type of evidentiary hearing.
>
> "Accordingly, we vacate the district court's order denying the motion and remand this case for an evidentiary hearing. . . "[4]

We wish to note especially that the italicized portion of the above-quoted text quotes from yet another circuit, the Seventh Circuit, and the Court cited to two other sister circuits as well. Furthermore, the Eighth Circuit's ruling is consistent with this Court's own holding that for purposes of a motion to dismiss, well-pled facts are presumed to be true.[5]

In the case at bar, the District Court abused its discretion. As to which standard of review should apply to the Eleventh Circuit for upholding that, or to both courts' rulings against petitioner Cano's other motions, this case is most similar to *Pierce v. Underwood*:

> "But when, as here, the trial court determination is one for which neither a clear statutory prescription nor a historical tradition exists, it is uncommonly difficult to derive from the pattern of appellate review of other questions an analytical framework that will yield the correct answer."[6]

Concerning standard of review, the Court has seen few cases like this. The Court should take this case to help

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[4] *Surety Ins. Co. of California v. Williams*, 729 F.2d 581, 582-583 (8th Cir. 1984) (citations omitted) (emphasis supplied); James Wm. Moore, *Moore's Federal Practice*, vol. 12, § 60.22[4], 60-75, n. 35 (Matthew Bender 3d ed. 2006).

[5] *Jenkins v. McKeithen*, 395 U.S. 411, 421-422, 89 S.Ct. 1843, 1849, 23 L.Ed.2d 404, 416-417 (1969).

[6] *Pierce v. Underwood*, 487 U.S. 552, 558, 108 S.Ct. 2541, 2546, 101 L.Ed.2d 490, 500 (1988) (footnote omitted).

clarify its still-unsettled doctrines of which standard of review to apply.[7]

The Eleventh Circuit's ruling in the case at bar also contrasts sharply with yet another Seventh Circuit Rule 60 case:

> " . . . the important point being that any person bound and significantly constrained by an equitable decree may present evidence to show that the decree should be lifted even if the primary wrongdoer is someone else. 'A defendant may move to dissolve an injunction if it injuriously affects his interests, *although the order is not against him*,' *In re Hendrix*, 986 F.2d 195, 197 (7th Cir. 1993) (quoting *Hall v. Orlikowski Construction Co.*, 24 Ill.App.3d 60, [62,] 321 N.Ed.2d 23, 25 (1974)), *as may a nonparty* who is bound by the injunction. *Memorial Health Systems, Inc. v. Halifax Hospice, Inc.*, 689 So.2d 373 (Fla.App. 1997). Any other rule would give more rights to an adjudicated wrongdoer *than to an innocent person forced to bear many of the costs of the wrongdoing*; we cannot see what sense that would make. There is no doubt that the constraints that the decree places on IPS's autonomy give it standing to challenge the decree."[8]

Respondent Baker vigorously opposed Cano in the District Court. Since petitioner's attorney fraudulently used her, how adversarial do respondents even have to be for this Court to let her at least clear her own name now that all other options are gone?

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[7] *Ibid.* See also *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 401-402, 110 S.Ct. 2447, 2458-2459, 110 L.Ed.2d 359, 379-380 (1990), *Pullman-Standard v. Swint*, 456 U.S. 273, 286, n. 16, 102 S.Ct. 1781, 1789, n. 16, 72 L.Ed.2d 66, 78, n. 16 (1982), and Steven Alan Childress, *Primer on Standards of Review in Federal Civil Appeals*, 161 F.R.D. 123, 126-132 (1995).

[8] *U.S. v. Board of School Commissioners*, 128 F.3d 507, 511 (7th Cir. 1997) (emphasis supplied).

B. The Eleventh Circuit Decided This Question In A Way Which Conflicts With Relevant Decisions Of This Court

1. The Eleventh Circuit Decided This Question In A Way That Violates This Court's Law On Statutory Construction

Even if petitioner Cano had not been fraudulently misrepresented, the Court of Appeals just assumed that a party who prevailed originally is necessarily *in locus standi* of a prevailing party even if that party is being harmed now by the decree. In denying the petitioner an evidentiary hearing to show the factual basis of the harm caused to her now, the Eleventh Circuit ignored the language of Rule 60 and certain precedents of this Court. Rule 60(b) says, in pertinent part,

> "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . .
>
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (5) . . . it is no longer equitable that the judgment should have prospective application; or
>
> (6) any other reason justifying relief from the operation of the judgment."

This Court has said that in determining the meaning of the Federal Rules or any Act of Congress, the wording must govern.[9] Granted, common sense itself suggests that Rule 60 relief should be available only to someone who is presently harmed.[10] But we ask this Court to note two other things as well: 1.) The language of Rule 60 does not specify that relief

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[9] *Martin v. Wilks*, 490 U.S. 755, 763-764, 767, 109 S.Ct. 2180, 2185, 2187, 104 L.Ed.2d 835, 845, 847 (1989); *N.O.W. v. Scheidler*, 510 U.S. 249, 257-261, 114 S.Ct. 798, 804-805, 127 L.Ed.2d 99, 108-110 (1994).

[10] See *N.O.W. v. Scheidler*, 510 U.S. at 260, 114 S.Ct. at 805, 127 L.Ed.2d at 110 (1994) (discussing meanings "fairly implied" in the wording).

is available only to a party who lost initially; and, 2.) The language of Rule 60 most certainly does not say that a party who prevailed originally must necessarily then be *in locus standi* of a prevailing party for purposes of Rule 60 from then on, no matter what harm may have come to her.

2. Dismissal Violated This Court's Holdings On Due Process

It was conclusive to the Eleventh Circuit that Cano got relief that she supposedly had asked for; she was given no chance to rebut any presumption about that.[11] But this Court has said,

> "The core of due process is the right to notice *and a meaningful opportunity to be heard.*"[12]

In that light, it is imperative for the sake of this Court's honor and credibility that it insist on procedural due process for both sides of the abortion debate.[13]

II. *Planned Parenthood v. Casey* Has Failed

In *Planned Parenthood v. Casey* this Court said,

> "Where, in the performance of its judicial duties, the Court decides a case in such a way as to resolve the sort of intensely divisive controversy reflected in *Roe* and those rare, comparable cases, its decision has a dimension that the resolution of the normal case does not carry. It is the dimension present whenever the Court's interpretation of the Constitution calls the contending sides of a national controversy to end

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[11] *Cano v. Baker*, 435 F.3d 1337, 1340, 1342 (11th Cir. 2006).

[12] *LaChance v. Erickson*, 522 U.S. 262, 266, 118 S.Ct. 753, 756, 139 L.Ed.2d 695, 700 (1998) (emphasis supplied) (citation omitted). See also, *Los Angeles v. David*, 538 U.S. 715, 716-717, 123 S.Ct. 1895, 1896, 155 L.Ed.2d 946, 949 (2003).

[13] See *Thornburgh v. A.C.O.G.*, 476 U.S. 747, 814, 106 S.Ct. 2169, 2206, 90 L.Ed.2d 779, 828 (1986) (O'Connor & Rehnquist, JJ., dissenting).

their national division by accepting a common mandate rooted in the Constitution."[14]

Perhaps this Court thought that *Casey* would end the confirmation battles for nominees to this Court. By this point, however, the Court knows better. For the recent nomination battles, contentious as they were, were nonetheless fought with neither side thinking that *Roe* itself is now at stake. But if the vote for supporting *Roe* ever goes back to 5-4 in favor of *Roe*, the battle over a potential fifth vote to overturn *Roe* will return us to the bitter fights of the late '80s and early '90s, especially if the nominee is chosen by a president considered hostile to *Roe*.

Second, rather than cooling off the national debate on abortion, *Casey* inadvertently intensified it. For through the advance of abortion technology, partial-birth abortion arose in the wake of *Casey*, bringing with it the need for resolution of the interests pertaining thereto by this Court. This started with *Stenberg v. Carhart*.[15] Now, in what is a challenge to a certain interpretation of this Court's holding in *Stenberg*, there are *Carhart v. Gonzales* and *Planned Parenthood v. Gonzales*.[16] All these cases have involved issues of fetal pain. In fact, in one of the two cases which this Court will now be reviewing, the Northern District of California said that if *Stenberg* is the law of the land, it does not matter if the unborn child feels pain.[17] This means that if *Stenberg* is good law, then it doesn't matter *what* the level or even the duration of the pain may be, or how it is brought about, by any technology in existence now or which may be developed in the future. Partial-birth abortion also illustrates how *Casey* can never put

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[14] *Planned Parenthood v. Casey*, 505 U.S. 833, 866-867, 112 S.Ct. 2791, 2815, 120 L.Ed.2d 674, 708 (1992).

[15] *Stenberg v. Carhart*, 530 U.S. 914, 120 S.Ct. 2597, 147 L.Ed.2d 743 (2000).

[16] *Carhart v. Gonzales*, 413 F.3d 791 (8th Cir. 2005), *cert. granted*, 74 U.S.L.W. 3471 (Feb. 21, 2006); *Planned Parenthood v. Gonzales*, 435 F.3d 1163 (9th Cir. 2006), *cert. granted*, 74 U.S.L.W. 3702 (June 19, 2006).

[17] *Planned Parenthood Federation of America v. Ashcroft*, 320 F.Supp.2d 957, 1030-1031 (N.D.Cal. 2004).

an end to the advancement of medical technology, or to the development of more issues pertaining to pain, genetic manipulation, or the exploitation and "harvesting" of the unborn for organ and tissue transplants, for the sake of born or even other unborn children, as such technology and practices arise.

Third, the new legislation of South Dakota flying directly in the face of *Roe* gives this Court notice that the end to public debate which the Court had sought in *Casey* simply has not materialized.[18] And the prospect of public debate changing into anything even remotely resembling what this Court had been hoping for in *Casey* any time soon is either slim or nonexistent. The State of Mississippi, for instance, has been considering a similar statute.[19] As a writer for ProChoiceMississippi.org observed recently on that organization's web site: "No compromise was reached regarding SB 2922, and so (for now) the various incarnations of the abortion ban have died. I fully expect to see it raise its ugly head again next year."[20]

Fourth, if the disdain for this Court shown by the States of South Dakota and Mississippi were confined only to the political branches of government, that would perhaps be understandable. But contempt for this Court's jurisprudence of abortion is not confined to the political branches. *Roe* itself provides us with a notable example in Justice White's dissent.[21]

Then, one year before *Casey* was decided, a young father was prosecuted for trespass when he tried, unsuccessfully, to prevent the abortion of his unborn child. He stipulated to all of the elements of the offense except the criminal state of mind. His defense was based on necessity: the need to save a person, the unborn child. The judge concluded that the

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[18] SDCL 22-17-8. See Appendix at A-11.

[19] SB 2922. See Appendix at A-13.

[20] See Appendix at A-16. Deirdra Harris Glover, Lawmakers Adjourn Session Without Reaching Compromise on Abortion Ban; available at http://prochoicemississippi.org/content/view/39/1/, March 31, 2006.

[21] *Roe*, 410 U.S. at 221, 93 S.Ct. at 762, 35 L.Ed.2d at 195 (1973) (White & Rehnquist, JJ., dissenting).

defense had proven that the unborn child is a human being. The prosecution, however, claimed that the father was no more justified in trying to block the abortion of his own child than he would be in trespassing to prevent the legal execution of a condemned criminal. The judge agreed with the prosecution and convicted the father, saying,

> "In 1973 they chose not to resolve the difficult question of when life begins. Their reasoning at that time was based upon the fact that there was no consensus in the medical and scientific community as to when individual human life began. But times have changed, and perhaps that question should be addressed by the United States Supreme Court today. However, Roe versus Wade is still the law of the land and this Court is bound by it, therefore, I find that the eight week old fetus in this case was a living human being that was legally executed pursuant to the United States Supreme Court's decision in Roe versus Wade . . ."[22]

Politely worded as that statement may have been, the disdain for this Court inherent therein is apparent nonetheless. Perhaps this Court thought *Casey* would put an end to such sentiments, at least within the judiciary, the dissenting opinion of Justice Scalia in *Casey* itself to the contrary notwithstanding.[23] Two years later, however, a member of the Court of Appeals of the Commonwealth of Kentucky made the following remarks,

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[22] These statements are contained within this Court's records. See Hrg. Transcr. (Apr. 29, 1991), Appendix to Petition for a Writ of Certiorari A-186, A-199 to A-200, *Loce v. State of New Jersey*, 510 U.S. 1165 (1994) (denying cert.), docket # 93-1148 (Jan. 18, 1994). A copy is provided to each party. We ask the Court to take notice of its existence in the Court's records. See *National Fire Ins. Co. of Hartford v. Thompson*, 281 U.S. 331, 336, 50 S.Ct. 288, 290, 74 L.Ed. 881, 885 (1930); see also *Southern Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Group Ltd.*, 181 F.3d 410, 426-427 (3rd Cir. 1999).

[23] *Planned Parenthood v. Casey*, 505 U.S. at 979, 112 S.Ct. at 2873, 120 L.Ed.2d at 781 (1992) (Scalia, J., Rehnquist, C.J., White & Thomas, JJ., concurring in the judgment in part and dissenting in part).

> "It is my belief though that eventually the majority opinion of *Roe* will be buried as an atrocity and rightfully recognized as one of the most immoral laws of humankind, comparable to the holding in *Dred Scott v. John Sandford*, 60 U.S. 393, 19 Howard 393, 15 L.Ed. 691 [1857], and the 1935 Nurenberg Laws of the German Third Reich.[24]

Then, in 2004, the Fifth Circuit was considering an appeal regarding the Rule 60 motion for relief from judgment in the companion case to this case, *Roe v. Wade*. But in ruling against plaintiff Roe (McCorvey), Judge Edith Jones felt compelled to take the unusual step of writing a concurring opinion to her own opinion for the Court itself, saying,

> "[T]his case . . . brought forth, instead of a confined decision, an 'exercise of raw judicial power.' *Roe v. Bolton*, 410 U.S. 179, 222, 93 S.Ct. 762, 763, 35 L.Ed.2d 147 (1973) (White, J., dissenting) [sic] . . . . [T]he serious and substantial evidence [McCorvey] offered could have generated an important debate over factual premises that underlay *Roe*.
>
> "McCorvey presented evidence that goes to the heart of the balance *Roe* struck between the choice of a mother and the life of her unborn child. First, there are about a thousand affidavits of women who have had abortions and claim to have suffered long-term emotional damage and impaired relationships from their decision. Studies by scientists, offered by McCorvey, suggest that women may be affected emotionally and physically for years afterward and may be more prone to engage in high-risk, self-destructive conduct as a result of having had abortions. Second, *Roe*'s assumption that the decision to abort a baby will be made in close consultation with a woman's private physician is called into question by affidavits from workers at abortion clinics, where most abortions are now

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[24] *Cabinet For Human Resources v. Women's Health*, 878 S.W.2d 806, 809 (Ky.App. 1994) (McDonald, J., concurring).

performed. According to the affidavits, women are often herded through their procedures with little or no medical or emotional counseling. Third, McCorvey contends that the sociological landscape surrounding unwed motherhood has changed dramatically since *Roe* was decided. No longer does the unwed mother face social ostracism, and government programs offer medical care, social services, and even, through 'Baby Moses' laws in over three-quarters of the states, the option of leaving a newborn directly in the care of the state until it can be adopted. Finally, neonatal and medical science, summarized by McCorvey, now graphically portrays, as science was unable to do 31 years ago, how a baby develops sensitivity to external stimuli and to pain much earlier than was then believed. In sum, if courts were to delve into the facts underlying *Roe*'s balancing scheme with present-day knowledge, they might conclude that the woman's 'choice' is far more risky and less beneficial, and the child's sentience far more advanced, than the *Roe* Court knew.

"This is not to say whether McCorvey would prevail on the merits of persuading the Supreme Court to reconsider the facts that motivated its decision in *Roe*. But the problem inherent in the Court's decision to constitutionalize abortion policy is that, unless it creates another exception to the mootness doctrine, the Court will never be able to examine its factual assumptions on a record made in court. Legislatures will not pass laws that challenge the trimester ruling adopted in *Roe* (and retooled as the 'undue burden' test in *Casey; see Casey*, 505 U.S. at 872-78, 112 S.Ct. at 2817-21). No 'live' controversy will arise concerning this framework. Consequently, I cannot conceive of any judicial forum in which McCorvey's evidence could be aired.

"At the same time, because the Court's rulings have rendered basic abortion policy beyond the power of our legislative bodies, the arms of representative government may not meaningfully debate McCorvey's evidence. The perverse result of

the Court's having determined through constitutional adjudication this fundamental social policy, which affects over a million women and unborn babies each year, is that the facts no longer matter. This is a peculiar outcome for a Court so committed to 'life' that it struggles with the particular facts of dozens of death penalty cases each year.

"Hard and social science will of course progress even though the Supreme Court averts its eyes. It takes no expert prognosticator to know that research on women's mental and physical health following abortion will yield an eventual medical consensus, and neonatal science will push the frontiers of fetal 'viability' ever closer to the date of conception. One may fervently hope that the Court will someday acknowledge such developments and re-evaluate *Roe* and *Casey* accordingly. That the Court's constitutional decisionmaking leaves our nation in a position of willful blindness to evolving knowledge should trouble any dispassionate observer not only about the abortion decisions, but about a number of other areas in which the Court unhesitatingly steps into the realm of social policy under the guise of constitutional adjudication."[25]

In that light, consider what this Court had said in *Casey*:

"The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands. . . . The Court's concern with legitimacy is not for the sake of the Court, but for the sake of the Nation to which it is responsible."[26]

The Court must face one plain and simple fact: Whatever high hopes this Court may have had for *Casey* on the day it was

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[25] *McCorvey v. Hill*, 385 F.3d 846, 850-853 (5th Cir. 2004) (Jones, J., concurring) (citations omitted); *cert. den.*, 543 U.S. 1154.

[26] *Casey*, 505 U.S. at 865, 868, 112 S.Ct. at 2814, 2816, 120 L.Ed.2d at 707, 709.

decided must now be seen as having been too optimistic. Public disregard for this Court is growing, not ebbing. Likewise, judicial disdain for this Court has not abated, and is now, post-*Casey*, even openly expressed in plain language in the cases.

Casey has failed. It is "unsound in principle and unworkable in practice".[27] The Court must now choose how to deal with this.

A. *Casey* Is Flawed And Must Be Reconsidered

1. *Casey's* Statements On *Stare Decisis* Did Not Follow This Court's Own Precedent On *Stare Decisis*

To consider whether *stare decisis* applies, we must first consider what *stare decisis* requires. In 1974 this Court said,

> "Since we deal with a constitutional question, we are less constrained by the principle of *stare decisis* than we are in other areas of the law."[28]

At that point this Court dropped a footnote, saying,

> "In the words of Mr. Justice Brandeis: 'S*tare decisis* is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right.... This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation. But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The court bows to the lesions of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function.' *Burnet v. Coronado Oil &*

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[27] See *Garcia v. San Antonio Metro*, 469 U.S. 528, 546, 105 S.Ct. 1005, 1015, 83 L.Ed.2d 1016, 1031 (1985); see also *Casey*, 505 U.S. at 855, 112 S.Ct. at 2809, 120 L.Ed.2d at 700.

[28] *Edelman v. Jordan*, 415 U.S. 651, 671, 94 S.Ct. 1347, 1359, 39 L.Ed.2d 662, 677 (1974).

Gas Co., 285 U.S. 393, 406-408 (1932) (dissenting opinion) (footnotes omitted)."[29]

Although all footnotes of Justice Brandeis' opinion were omitted in *Edelman*, we wish to draw the Court's attention in particular to one of those footnotes from that portion of the text of Justice Brandeis' opinion that actually was quoted in *Edelman*:

> "Compare Taney, C.J., in *The Passenger Cases*, 7 How. 283, 470[, 12 L.Ed. 702]: 'After such opinions, judicially delivered, I had supposed that question to be settled, so far as any question upon the construction of the Constitution ought to be regarded as closed by the decision of this court. I do not, however, object to the revision of it, and am quite willing that it be regarded hereafter as the law of this court, that its opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported.'
>
> "See, also, Miller, J., dissenting, in *Washington University v. Rouse*, 8 Wall. 439, 444[, 19 L.Ed. 498]: 'with as full respect for the authority of former decisions, as belongs, from teaching and habit, to judges trained in the common-law system of jurisprudence, we think that there may be questions touching the powers of legislative bodies, which can never be finally closed by the decisions of a court. * * *'
>
> "Compare Field, J., in *Barden v. Northern Pacific R. Co.*, 154 U.S. 288, 322[, 14 S.Ct. 1030, 1036, 38 L.Ed. 992]: 'It is more important that the court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations. Those doctrines only will eventually stand which

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[29] *Edelman*, 415 U.S. at 671, n. 14, 94 S.Ct. at 1359-1360, n. 14, 39 L.Ed.2d at 677, n. 14.

bear the strictest examination, and the test of experience.' "[30]

Later on in his opinion Justice Brandeis went on to say,

"The reasons why this court should refuse to follow an earlier constitutional decision which it deems erroneous are particularly strong where the question presented is one of applying, as distinguished from what may accurately be called interpreting the Constitution. . . . *This is strikingly true of cases under the due process clause* when the question is whether a statute is unreasonable, arbitrary, or capricious; . . . . For not only may the decision of the fact have been rendered upon an inadequate presentation of then existing conditions, but the conditions may have changed meanwhile. Moreover, the judgment of the court in the earlier decision may have been influenced by prevailing views as to economic or social policy which have since been abandoned. In cases involving constitutional issues of the character discussed, this court must, in order to reach sound conclusions, feel free to bring its opinions into agreement with experience and with facts newly ascertained, so that its judicial authority may, as Mr. Chief Justice Taney said, 'depend altogether on the force of the reasoning by which it is supported.' "[31]

Roe and *Doe*, of course, were decided under the Due Process Clause, to which Justice Brandeis made specific reference.[32]

Eighteen years after *Edelman*, however, the *Casey* Court simply said:

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[30] *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 408-409, n. 3, 52 S.Ct. 443, 448, n. 3, 76 L.Ed. 815, 825-826, n. 3 (1932) (Brandeis, Stone, & Roberts, JJ., dissenting).

[31] *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. at 410-413, 52 S.Ct. at 449-450, 76 L.Ed. at 826-828 (1932) (Brandeis, Stone, & Roberts, JJ., dissenting) (emphasis supplied).

[32] See *Roe*, 410 U.S. at 164, 93 S.Ct. at 732, 35 L.Ed.2d at 183. See also *Doe*, 410 U.S. at 189-201, 93 S.Ct. at 746-752, 35 L.Ed.2d at 211-218.

> "Thus, for example, we may ask whether the rule has proven to be intolerable simply in defying practical workability; whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation; whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine; or whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification."[33]

While it is true that all of these statements in *Casey* are valid bases for reconsidering precedent, it is not what this Court actually said in *Casey* that conflicts with *Edelman*, but rather it is what this Court did *not* say in *Casey* that conflicts with *Edelman*. For in *Edelman* this Court first made its own statement that constitutional adjudication is a reason in and of itself for treating *stare decisis* differently; the Court then also adopted certain statements of Justice Brandeis on point. But the *Casey* Court did not even mention *Edelman*, let alone the fact that Justice Brandeis' approach had been adopted as a holding of this Court itself. The Court simply said,

> "Within the bounds of normal *stare decisis* analysis, then, and subject to the considerations on which it customarily turns, the stronger argument is for affirming *Roe*'s central holding, with whatever degree of personal reluctance any of us may have, not for overruling it."[34]

Academically, this would not be a problem if this Court had first modified or overruled *Edelman* in *Casey*, or had tried to reconcile *Edelman* with *Casey*. But the Court did not do so. We cannot help but notice, then, how odd and ironic a thing it is that in *Casey* this Court did not even follow its own precedent in *Edelman* (or the opinion of Justice Brandeis, which *Casey* cited t[illegible]even as the *Casey* Court was supposedly expounding

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[33] *Casey*, 505 U.S. at 854-855, 112 S.Ct. at 2808-2809, 120 L.Ed.2d at 700 (citations omitted).

[34] *Casey*, 505 U.S. at 861, 112 S.Ct. at 2812, 120 L.Ed.2d at 704.

on the law of precedent. We must wonder, then, is there one law of *stare decisis* in this Court for cases not involving abortion,[35] and another law of *stare decisis* – (a separate but equal law?) – for cases which do involve abortion?

2. The Court Should Take This Case To Consider How *Stare Decisis* Should Apply If The Precedent Can Be Proven To Be Based On A Fraud On The Court

In law school it makes no difference whether a precedent is based on a fraud on the court. But given the adversarial, case-or-controversy nature of federal courts, should *stare decisis* apply with equal force in an Article III court even if the precedential case can be proven to be based upon a fraud on the court? Some might say in response that even if *Doe* was fraudulent, *Roe* itself was not fraudulent. In reply to that, we note that this Court itself said that *Doe* and *Roe* are to be read together.[36] That being the case, we submit that a proper reexamination of one of the two cases warrants a reexamination of the other as well.

In so saying, we note that it was in this case, not *Roe*, that this Court first defined the health of the mother for purposes of abortion.[37] And how the health of the mother is defined, as well as how it interplays with the interests of her child, seems to be the bone in everyone's throats in the partial-birth cases. In the cases which this Court has accepted for oral argument, the Ninth Circuit made a special point of noting that the sponsors of the partial-birth statute rejected a health exception because, *inter alia*, they concluded that "health" was defined so loosely by this Court that it can mean anything at all,[38] and saying specifically,

> "A co-sponsor of the Act, Senator DeWine, argued that because of the way 'health of the mother' has been defined by the Supreme Court, an exception to protect

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[35] See *Agostini v. Felton*, 521 U.S. 203, 235-236, 117 S.Ct. 1997, 2016-2017, 138 L.Ed.2d 391, 422 (1997).

[36] *Roe*, 410 U.S. at 165, 93 S.Ct. at 733, 35 L.Ed.2d at 184.

[37] *Doe*, 410 U.S. at 192, 93 S.Ct. at 747, 35 L.Ed.2d at 212-213.

[38] *Planned Parenthood v. Gonzales*, 435 F.3d at 1186, n. 29.

> it would mean 'almost any excuse would be enough to justify a late-term partial-birth abortion. Yet the abortionist would be within the law because he determined the health of the mother was at risk.'"[39]

The Eighth Circuit noted in its partial birth case how this is a source of contention within this Court itself;[40] as one member of this Court said,

> "The majority's conclusion that health exceptions are required whenever there is any support for use of a procedure is particularly troubling because the majority does not indicate whether an exception for physical health only is required, or whether the exception would have to account for 'all factors – physical, emotional, psychological, familial, and the woman's age – relevant to the well being of the patient.' *Doe v. Bolton*, 410 U.S. 179, 192 (1973)."[41]

The case at bar will allow the Court to reexamine the very core of partial-birth abortion in far greater detail than the partial-birth cases by themselves would, and reexamine its definition of health. Or if the Court chooses, it can at least reexamine the proper balance between the health of the mother and the interests of her child. For the affidavits supporting the petitioner demonstrate that arguably, upholding the health of the mother can at least equally mean in some cases that the procedure should not be allowed. In particular we must ask, do *Doe* and *Roe*, as precedent, even require partial-birth abortion? And should *stare decisis* apply *automatically* with full rigor in a topic of this importance even when there is a distinct possibility that the foundation of what constitutes health rests upon a fraud?

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[39] *Ibid.*

[40] *Carhart v. Gonzales*, 413 F.3d at 796-797.

[41] *Stenberg*, 530 U.S. at 1013, n. 21, 120 S.Ct. at 2652-2653, n. 21, 147 L.Ed.2d at 810, n. 21 (Thomas, J., Rehnquist, C.J., & Scalia, J., dissenting); see also note 37, *supra*.

B. In The Alternative, *Casey* Must Be Strengthened And Brought To Completion

In *Casey* this Court noted that it would be proper to reconsider *Roe* if new facts came to light which would justify reexamining that case.[42] If in fact this Court would ever consider reviewing *Roe* on the basis of newly elucidated facts, this is the perfect opportunity for the Court to do so. For the petitioner filed over 5,300 pages of documentation and over 1,000 affidavits by aborted women and abortion clinic employees, along with new scientific documentation, all of which can be expounded upon by highly detailed expert testimony at an evidentiary hearing. That being the case, is there not at least enough of an alleged change in the factual basis of *Doe* and *Roe* to allow the petitioner her day in court to prove it?

If, on the other hand, this Court wants to tell the Nation that, contrary to *Casey* as it now stands, it will never reconsider this case and *Roe* even when the facts could be so thoroughly reviewed, then the Court should take this case in order to say so. For that, at least, will then finally justify denying the petitioner her evidentiary hearing, even if only *ex post facto*.

As for this Court itself, simply denying certiorari will not be enough. For if the Court cannot come out and tell us right now in plain language that we can never get a review of *Roe* and *Doe*, not even under circumstances like this, then this Court can only count on seeing case after case over and over again, and nomination battles without end.

CONCLUSION

Wherefore, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

LAWRENCE J. JOYCE
Counsel of Record

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[42] *Casey*, 505 U.S. at 855, 860-864, 112 S.Ct. at 2809, 2811-2814, 120 L.Ed.2d at 700, 703-706.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Sandra Cano, formerly known as MARY DOE,	§	
Plaintiff,	§	**CIVIL ACTION**
V.	§	**NO. 13676**
ARTHUR BOLTON, Attorney General of the State of Georgia Through His Official Successor in Office, THURBERT E. BAKER; LEWIS R. SLATON, as District Attorney of Fulton County, Georgia Through His Official Successor in Office, PAUL L. HOWARD, JR.; And HERBERT T. JENKINS, as Chief of Police of the City of Atlanta Through His Official Successor in Office, RICHARD PENNINGTON,	§	
Defendants.	§	

AFFIDAVIT OF SANDRA CANO

STATE OF GEORGIA	§	KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF FULTON	§	

BEFORE ME, the undersigned authority, on this day personally appeared SANDRA CANO, who after being duly sworn upon his [sic] oath deposed and said as follows:

"1. My name is Sandra Cano, and I reside in Georgia. I am competent to make this Affidavit. I have personal knowledge of the facts stated herein and the following is true and correct.

2. In 1973, I was the woman designated as 'Mary Doe', the Plaintiff in *Doe v. Bolton*, 410 U.S. 179 (1973), the companion case to *Roe v. Wade*, 410 U.S. 113 (1973). Although the courts understood that 'Mary Doe' was not my real name, what the courts did not know was that, contrary to the facts recited in my 1970 Affidavit, I neither wanted nor sought an abortion. I was nothing but a symbol in *Doe v. Bolton* with my experience and circumstances discounted and misrepresented. During oral arguments before the United States Supreme Court one of the Justices stated that it did not matter whether I was a real or fictitious person. This is where the Court was so very wrong. It did matter. I was a real person, and I did not want an abortion.

3. Abortion is just like *Doe v. Bolton*. It discounts the real experiences of the mothers. It misrepresents that abortion is for them. Just as Mary Does' true desires were hidden from the courts by those promoting abortion, so, too, have the real facts about abortion been hidden. Today, this Court will know the real truth about the real woman who was used to deceive, not only the courts, but the women of this nation about the reality of abortion.

4. 'Sandra Race Bensing' was my real name in 1970. I was twenty-two years old and pregnant with my fourth child when I first met the *Doe v. Bolton* attorney, Margie Pitts Hames. I had gone to legal aid to get a divorce and to find an attorney to help me regain custody of my two children. My

husband was not supporting us, and we had to live at the Salvation Army. At times we lived with my mother, but my stepfather did not want us there. I loved my children, but I could not care for them financially.

5. I was a trusting person and did not read the papers placed in front of me by my lawyer. I truly thought Margie Pitts Hames was having me sign divorce papers. I did not even suspect that the papers related to abortion until one afternoon when my mother and my lawyer told me that my suitcase was packed to go to a hospital, and that they had scheduled an abortion for the next day. They advised me that my doctor, Dr. Donald Block, was going to perform an abortion. I told both my mother and my lawyer that I would not have an abortion. Not then. Not ever. They persisted in their demands upon me.

6. When the demand for an abortion persisted, I fled to Oklahoma and stayed at the home of my ex-husband's grandmother. I remained in Oklahoma until my mother and lawyer assured me that they would cease their pressuring me to have an abortion. I was relieved that the ordeal was ended. Because they promised never to force me to have an abortion, I returned to Georgia.

7. My lawyer sent me a plane ticket so I could fly from Oklahoma to Georgia. She wanted me to be in a courtroom with other pregnant mothers. The night before I went to court, my mother and my lawyer expressed concern that I would leave again, and so they had me stay at the apartment of a legal-aid lawyer. Before the court appearance, I was told by my lawyer not to say anything in court. As a result, I never did say anything in court.

8. My predicament made it difficult for me to take care of my children, but I didn't need an abortion. I needed help, but all of the people around me – my husband, my mother and my lawyer – refused to help me with my children.

9. Instead of real help, my mother, stepfather and my lawyer persisted in their demands that I have an abortion. Those demands were made for themselves so they would not be burdened. It was, in my mind, a demand for what they thought was the easiest way for them to get out from under any obligation to help my new baby and me. But the abortion was not in my interest. I was the mother of a baby for whom I was responsible. I had a natural desire to have my baby and to raise her. I carried my child to full term and gave birth. Because no one would help me I felt compelled to surrender my rights and give my baby up for adoption.

10. One day in 1973, my mother and stepfather called me into their bedroom. Their television was on. They shouted to me excitedly, "Look! You won! You won!" Margie Pitts Hames was on television and the story reported that the United States Supreme Court had made abortion legal. At that time, I did not fully comprehend what my role was in the Court's decision in *Doe v. Bolton*.

11. Over the years, I gained a greater and greater sense that I was wrongfully used in *Doe v. Bolton*. A number of years ago, I decided that I wanted to see my file in the case so I could see what was said about me. I went to the courthouse to see my records which were under seal. An attorney, Wendell Bird, agreed to represent me and he asked that my records in my case be unsealed. I produced my driver's license, my

birth certificate, and my marriage certificate. The attorney who represented me in *Doe v. Bolton*, Margie Pitts Hames, tried to stop me from getting my own records, and I did not understand why.

12. It was only when I first saw the opened records in *Doe v. Bolton* that I understood why Margie didn't want me to see them. The records stated that I applied for an abortion, was turned down, and, as a result, sued the state of Georgia. According to the records, I had applied for an abortion through a panel of nine doctors and nurses at a state-funded hospital, Grady Memorial Hospital. That was a false statement. After reading the court records, I contacted the hospital and tried to obtain my records. At first I was told there were records, but when my new attorney sent his legal assistant to review the records, we were told that they did not exist. The hospital said they didn't have any records. I never sought an abortion there or anywhere else.

13. At times, I have been forced to reflect upon the events that led up to that day in 1973 when my mother and stepfather told me about the Supreme Court decision in *Doe v. Bolton*. In 1970, my life was a mess. I was having my fourth child, but no responsible husband or real place to live. I was uneducated. When I came back from Oklahoma, I was so relieved that no one was going to pressure me to have an abortion that I took part in a court proceeding without understanding what was really happening. I was used wrongly, but I didn't inquire enough. In retrospect, there were big signs which revealed what was happening.

14. Once a television man came to Margie's office and I was asked what I thought of abortion. I told him that, "I don't believe in abortion and I don't want an abortion." I also said I didn't care if anyone else had an abortion, that it wasn't my business. All I cared about, at that time, was that I didn't want an abortion. I was not thinking of the other women. I did not understand that I was involved in a case that sought to legalize abortion. I was naïve. In retrospect, perhaps, I could have discovered what was going on. But I was in a crisis. I depended on my mother's help. My lawyer became upset with me because I would never say to anyone that I would have an abortion. I should have, perhaps, understood what was happening, but I was simply attempting to survive. I remember Margie debating me. She claimed we were involved in a liberation right. She said women were entitled to equal pay for equal work, and I agreed. I never saw the pleading filed in court.

15. Many years later, when I saw the unsealed records in my case, I could not believe what the certification filed in my name said. I am certain the signature on the affidavit that said I wanted an abortion was not mine. I never saw that affidavit until the records were unsealed. If it was my signature, it was obtained without my knowing the contents of the affidavit. I had fled to Oklahoma to avoid an abortion. My lawyer knew I would never say I wanted one. The only reason I went to a lawyer was to get my children back. My predicament was used to argue that my new baby's life should be terminated.

16. I have often rethought how my involvement in *Doe v. Bolton* came about. Over the years it has haunted me. I never had an abortion, but I know

what it is like to feel responsible for one. I know what it is like to feel like a mother who helped terminate the life of her own child. After *Doe v. Bolton* was decided and I was told about my involvement, I felt responsible for the experiences to which the mothers and babies were being subjected. In a way, I felt that I was involved in the abortions – that I was somehow responsible for the lives of the children and the horrible experiences of their mothers. I have felt that experience that the death of a child is my fault; the helplessness the mother feels as events occur around her without any power to stop them; and the guilt that is associated with being told by the courts and society that the child's death was performed for the mother and only the mother.

17. This last assertion – that abortion is performed for the mother – is the cruelest misrepresentation of all. My own circumstance, the one used to justify legal abortion in the first place, is a perfect example of this reality. There are many doctors, and clinics and others who were plaintiffs in *Doe v. Bolton*. As Mary Doe, I was the only pregnant mother who was a plaintiff. All of these other people – the doctors, nurses and clinics were using the Court to do what they thought was in my interest. They pressured the Court claiming I need the right to terminate the life of my own child. It was their solution, not mine. They claimed they did it out of compassion for me. But it was a false compassion. A true compassion would result in the fathers living up to their responsibilities. A true compassion, once a mother is in the predicament that the child's father abandoned her, would advise her how to get help and would provide her help. Unfortunately, the legal right to an abortion was sought in my

case because others thought it was too hard for them to give me real help. The abortion was sought for them, not for me.

18. But no matter how hard life happens to be, no one has the right to kill a baby – especially the baby's mother. She is the trustee of her child's life. She, of all people, has the sacred duty to protect the child. But the child's interests are not at odds with her own. They are in concert with one another. The mother derives a great benefit from her relationship with her child. It is as beneficial to her as it is the child. It is never in the interest of a mother to terminate the life of her own child.

19. I have been forced to live with the consequence of this false compassion for too long for me not to bring to the attention of the Court the fact that abortion is not in a woman's interest, and the fact that legalization of abortion began with manipulations and misrepresentations. Too many women who lost their children through abortion have told me of their emptiness, their sadness, the void in their lives, and how others forced them to have abortions and then blamed the abortion on the mother.

20. The experience of *Doe v. Bolton* must be understood and accounted for, not simply to correct the record in my own case, but to correct the law of abortion in general: abortion is not in the interest of a mother. It is a false solution imposed upon a mother by others.

21. *Doe v. Bolton* and my circumstanced [sic] were misused. *Doe v. Bolton* was a fraud upon the court. *Doe v. Bolton* was a secret case about abortion, which is a secret procedure. This secretiveness

allows others to prevail upon the mother and others can act against her interest. Women have told me how they were forced to have an abortion against their will. If it was alleged that I spoke for other women in *Doe v. Bolton*, then I gladly speak for other women in this case to say that abortion is too coercive by nature; too much the will of others; too much the will of a society which finds abortion more convenient for it than a commitment to the well being of the mother and the child.

22. The real experiences of the women must be known and taken into consideration by the court. Abortion is too much what others would like a woman to do, rather than what is in her interest and what she really wants.

23. Others told the court that I wanted an abortion. The law has developed, in part, based upon what my lawyer claimed I wanted, and that abortion was in my interest. I feel I have the duty to tell this Court the truth about what I really thought then, and what I think now. As the Plaintiff in *Doe v. Bolton*, I have a very substantial interest in the litigation before this court in the matter of *Roe v. Wade* and I can provide the court a unique perspective of the *Doe v. Bolton* case not available from any other source.

24. In the 1970s the people closest to me successfully manipulated my circumstances to justify abortion and wanted me to have an abortion, but I refused. Today this Court has the opportunity to review, not just the real facts surrounding the *Roe v. Wade and Doe v. Bolton*, the original abortion decisions, but the opportunity to review the testimony of hundreds of women who have real,

true, experiences with abortion and not perpetuate the *Doe v. Bolton* fraud upon the Court.

Further Affiant sayeth not."

/s/ Sandra Cano
Sandra Cano a.k.a. Mary Doe of
Doe v. Bolton

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on this 12th day of Aug., 2003.

/s/ Justin [Illegible]
NOTARY PUBLIC IN AND
FOR THE STATE OF GEORGIA

My commission expires:
Notary Public, Fulton County, Georgia
My Commission Expiers Oct. 18, 2005

South Dakota Codified Laws (SDCL)

22-17-8. Prohibition against certain acts causing termination of unborn human life. No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant woman any medicine, drug, or other substance with the specific intent of causing or abetting the termination of the life of an unborn human being. No person may knowingly use or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being.

Any violation of this section is a Class 5 felony.

Source: SL 2006, ch 119, § 2.

22-17-10. Medical procedure to prevent death of pregnant mother permitted – Pregnant mother upon whom abortion performed not subject to criminal penalty. No licensed physician who performs a medical procedure designed or intended to prevent the death of a pregnant mother is guilty of violating § 22-17-8. However, the physician shall make reasonable medical efforts under the circumstances to preserve both the life of the mother and the life of her unborn child in a manner consistent with conventional medical practice.

Medical treatment provided to the mother by a licensed physician which results in the accidental or unintentional injury or death to the unborn child is not a violation of this statute.

Nothing in §§ 22-17-7 to 22-17-12, inclusive, may be construed to subject the pregnant mother upon whom any

abortion is performed or attempted to any criminal conviction and penalty.

Source: SL 2006, ch 119, § 4.

House Amendments to Senate Bill No. 2922

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. Section 41-41-33, Mississippi Code of 1972, is amended as follows:

41-41-33. * * * No abortion shall be performed or induced *in the State of Mississippi*, except in the case of a medical emergency, *rape, incest or the presence of a life-threatening condition in the mother that would be worsened by continuing the pregnancy.*

* * *

SECTION 2. Section 41-41-39, Mississippi Code of 1972, is amended as follows:

41-41-39. Anyone who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion *in the State of Mississippi, except in the case of a medical emergency, rape, incest or the presence of a life-threatening condition in the mother that would be worsened by continuing the pregnancy*, shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of *Five Thousand Dollars ($5,000.00)*, by imprisonment in the county jail for a period of time not to exceed *one (1)* year, or both such fine and imprisonment.

SECTION 3. For the purposes of this act, rape shall be an exception to the prohibition for an abortion only if a formal charge of rape has been filed with an appropriate law enforcement official; and incest shall be an exception to the prohibition for an abortion only if a formal affidavit, sworn to under oath, is filed with an appropriate law enforcement official.

SECTION 4. It is the intent of the Legislature that the State of Mississippi will be responsible for the medical and educational needs of any child born to a citizen of this state as provided by law if the mother has received licensed family counseling during the gestation period and chose to continue the pregnancy to delivery, and the child will be eligible to receive these services until the child reaches the age of nineteen (19) and the mother agrees to allow for these services to be provided to the child.

SECTION 5. This act shall take effect and be in force from and after July 1, 2006.

Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

AN ACT TO AMEND SECTIONS 41-41-33 AND 41-41-39, MISSISSIPPI CODE OF 1972, TO PROHIBIT ABORTIONS IN THE STATE OF MISSISSIPPI EXCEPT IN CERTAIN CASES; TO PROVIDE THAT IT IS THE INTENT OF THE LEGISLATURE THAT THE STATE WILL BE RESPONSIBLE FOR THE MEDICAL AND EDUCATIONAL NEEDS OF ANY CHILD BORN TO A CITIZEN OF THE STATE AS PROVIDED BY LAW IF THE MOTHER RECEIVED COUNSELING DURING THE PREGNANCY AND CHOSE TO CONTINUE THE PREGNANCY TO DELIVERY; AND FOR RELATED PURPOSES.

HR03/SB2922PH.J

Don Richardson
Clerk of the House of Representatives

Lawmakers Adjourn Session Without Reaching Compromise on Abortion Ban

Written by Deirdra Harris Glover
Friday, 31 March 2006

I've been on and off the phone with the capitol all day, as has Felicia Brown, Planned Parenthood's Grassroots Coordinator.

They've adjourned the session. No compromise was reached regarding SB 2922, and so (for now) the various incarnations of the abortion ban have died. I fully expect to see it raise its ugly head again next year.

We made such a huge impact this year: the Mississippi chapter of the ACLU, NOW's chapter here in Jackson, Planned Parenthood's burgeoning coalition, concerned citizens, healthcare professionals, and members of the clergy. We are powerful when we work together, and I hope we'll continue to regularly meet before next year's session to discuss strategy and action. I certainly hope some of you who are inclined will help me expand this site to be a true resource for our cause.

Many of us are attending the Civil Liberties and Public Policy's 20th Annual Reproductive Rights Conference. We'll be bringing back excellent ideas to share with all of you. Jackson Area NOW is hosting a lunch on April 2nd for area activists to meet national NOW VPs, as well as a strategic meeting on April 15th to discuss fundraising as well as Operation Save America's national rally here in Jackson. The Mississippi ACLU's Reproductive Freedom Coalition meets every third Thursday of the month (next meeting is April 20th.) If there's any other pro-choice organizations in Mississippi, please direct them to me: I'm happy to give them free advertising here.

Thanks again to everyone who raised their voices and pens in this matter.

DHG
Last Updated (Sunday, 16 July 2006)

(available at http://prochoicemississippi.org/content/view/39/1/)